

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 793 OF 2013

Kuber Baburao Magdum ... Petitioner
Vs.
Chetan Kuber Magdum & Ors. ... Respondents

Mr. Manoj A. Patil, Advocate for the petitioner.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **7th July, 2017.**

P.C.:

Rule. Rule made returnable forthwith. None present for the respondents though served. This Writ Petition is finally heard finally and decided at the stage of admission, as the issue involved therein is short.

2. This Writ Petition is directed against the orders dated 27th August, 2012 and 29th August, 2012 passed by the District Judge, Jaysingpur below Exhibits 1 and 33 respectively in Regular Civil Appeal No. 74 of 2011. The petitioner is a defendant against whom the respondent nos. 1 to 3/original plaintiffs have filed the suit for declaration, partition and separate possession. The respondents nos. 1 to 3/plaintiffs are the wife and sons of the petitioner. The suit was decreed against which the petitioner preferred Regular Civil Appeal No. 74 of 2011. A notice for payment of paper book charges was issued by the District Court to the petitioner/appellant on 8th May, 2012

wherein it was indicated that the appellant to deposit the paper book charges within one month from the receipt of notice, which was not paid for about 3 ½ months, i.e., upto 27th August, 2012. Hence, District Judge, Jaysingpur dismissed the Appeal for want of paper book charges. Thereafter, on the same day, i.e., on 27th August, 2012, the petitioner/appellant filed the Application for recalling the order and seeking permission to pay the paper book charges. However, the said Application was unfortunately rejected by the District Judge, Jaysingpur by the order dated 29th August, 2012, against which the petitioner filed this Writ Petition on 19th December, 2012. The notices were issued to the respondent nos 1 to 3, however, initially only respondent No. 3/wife accepted the notice but respondent nos. 1 & 2/sons did not accept. In between, my predecessor by order dated 6th May, 2013 directed the petitioner to deposit the paper book charges in the District Court, Jaysingpur and issued notices to respondent nos. 1 to 3 and also directed the District Court to accept the paper book charges from the petitioner.

3. The learned counsel for the petitioner submitted that pursuant to the said order, the petitioner has deposited the paper book charges in the District Court on 15th June, 2013. He produced the photocopy of the said receipt, which is marked as Exhibit 1 for identification.

Thereafter, notices were issued. In between, the petition was dismissed against respondent nos. 1 and 2, who are sons. So, an Application for restoration was moved and again notices were issued. Thereafter the matter was restored against respondent No. 1 and 2. The learned counsel submitted that again the petitioner served respondent nos. 1 to 3, who are the main contesting parties and affidavit to that effect is filed.

4. Perused the affidavit of service disclosing that the respondents were served, however, none present for respondent nos. 1 to 3. Unfortunately, this Petition remained on file for four years for want of service. In view of the record before the Court and the order passed by this Court, Writ Petition is allowed.

5. Rule made absolute in terms of prayer clauses (a) and (b).

6. The parties to appear before the District Court on 17th July, 2017. The District Court shall issue fresh notices to respondent nos. 1 to 3 and thereafter shall hear the Appeal on merits. The petitioner is also directed to communicate this order independently by private service to respondent nos. 1 to 3.

(MRIDULA BHATKAR, J.)